

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEREK D. STEWART,

Plaintiff,

VS.

GREGORY CIZEK,

**JAMES D. SCHOEN, M. GRETEMAN,
and ELITE IMAGING OF SWANSEA.**

Defendants.

Case No. 3:20-CV-1089-MAB

MEMORANDUM AND ORDER

BEATTY, Magistrate Judge:

Plaintiff Derek Stewart filed a complaint against Elite Imaging of Swansea, Dr. Gregory Cizek, Dr. James D. Schoen, and M. Greteman for “identity theft,” “billing code fraud,” “double billing,” “medical malpractice,” and “attempted murder” (Doc. 1).¹ Plaintiff is asking for \$18 million in damages (Doc. 1). The complaint, however, does not sufficiently allege the existence of this Court’s subject matter jurisdiction. *See McCready v. White*, 417 F.3d 700, 702 (7th Cir. 2005) (“Ensuring the existence of subject-matter jurisdiction is the courts first duty in every lawsuit.”). As the party invoking federal jurisdiction, Plaintiff must demonstrate that all jurisdictional requirements are satisfied.

¹ The Court notes this is the third time Plaintiff has sued Elite Imaging based on the same, or substantially similar allegations. *See* SDIL case numbers 18-cv-2039-JPG-RJD and 19-cv-286-SMY. The first case was dismissed for lack of subject matter jurisdiction because the parties were not completely diverse and failure to state a claim. SDIL case number 18-cv-2039-JPG-RJD, Doc. 6. The second case was dismissed for failure to establish federal question jurisdiction and failure to state a claim. SDIL case number 19-cv-286-SMY, Doc. 12.

See Smart v. Local 702 Int'l Brotherhood of Elec. Workers, 562 F.3d 798, 802–03 (7th Cir. 2009).

Plaintiff indicates that the basis for the Court's jurisdiction is the federal question statute, 28 U.S.C. § 1331 (Doc. 1).² He did not, however, identify any federal statute or constitutional right that was purportedly violated (*see* Doc. 1), nor can the Court readily discern a basis for federal question jurisdiction from his allegations.

Accordingly, before the undersigned considers Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) or his motion to appoint counsel (Doc. 3), or conducts a threshold review of the complaint pursuant to 28 U.S.C. 1915(e)(2), Plaintiff must amend his complaint to set forth all of the information needed to determine whether jurisdiction lies in this Court. To that end, Plaintiff is **ORDERED** to file an amended complaint, on or before January 29, 2021. If Plaintiff fails to file an amended complaint in the manner and time prescribed or if, after reviewing it, the Court finds that he cannot establish subject matter jurisdiction, this case will be dismissed.

Additionally, Plaintiff has yet to return the form regarding consenting or declining to consent to magistrate judge jurisdiction despite a warning and additional time to do so (*see* Docs. 4, 6). Plaintiff is **ORDERED** to return the form (available at Docs. 4, 6) on or before January 29, 2021. Failure to do so may result in sanctions.

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the

² Diversity of citizenship under 28 U.S.C. § 1332 does not appear to be a viable basis for subject matter jurisdiction given that Plaintiff indicated he has an Illinois address, as does Dr. Cizek and Elite Imaging (*see* Doc. 1). *See also* SDIL case number 18-cv-2039-JPG-RJD, Doc. 6 (dismissing case because, amongst other things, Plaintiff admitted that both he and Elite Imaging were citizens of Illinois and therefore diversity jurisdiction did not exist).

Clerk of Court informed of any change in his address. This shall be done in writing and not later than seven days after a change in address occurs. Failure to comply with this Order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: December 16, 2020

s/ Mark A. Beatty
MARK A. BEATTY
United States Magistrate Judge